(3)

SUPREME COURT, U.S.
FILED
NOV 14 1994
OFFICE OF THE CLERK

No. 94-626

IN THE

Supreme Court Of The United States

October Term 1994

LEON C. BAKER,

Petitioner,

v.

J. R. BENNETT AND LAURA BENNETT,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE FOURTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

RESPONDENTS' BRIEF IN OPPOSITION

JAMES L. NORTH
Counsel of Record
J. TIMOTHY FRANCIS
James L. North & Associates
700 Title Building
300 21st Street North
Birmingham, Alabama 35203
(205) 251-0252

JOHN W. HALEY
BRUCE J. MCKEE
Hare, Wynn, Newell & Newton
The Massey Building
290 21st Street North, Suite 800
Birmingham, Alabama 35203-3713
(205) 328-5330

Date: November 11, 1994

10 pp

QUESTIONS PRESENTED

1. Whether the judgment of the Alabama Supreme Court was entitled to full faith and credit in Florida where (i) the issue of personal jurisdiction over petitioner had been fully and fairly decided by the Alabama Supreme Court and (ii) this Court had previously declined to review such issue.

2. Whether this Court should review factual allegations regarding political contributions to Justices of the Alabama Supreme Court where there is no evidence in the record to support such allegations.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE 2

REASONS FOR DENYING THE WRIT 4

CONCLUSION 7

TABLE OF AUTHORITIES

Cases: *Page:*

Baker v. Bennett,
603 So.2d 928 (Ala. 1992), *cert. denied*,
____U.S. ___, 113 S.Ct. 1260,
122 L.Ed.2d 658 (1993) 3, 4, 5

Statutes:

FLA.STAT. §§35.501-55.509 (1991) 2

No. 94-626

IN THE

Supreme Court Of The United States

October Term 1994

LEON C. BAKER,

Petitioner,

v.

J. R. BENNETT AND LAURA BENNETT,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE FOURTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

RESPONDENTS' BRIEF IN OPPOSITION

Respondents J. R. and Laura Bennett respectfully request that this Honorable Court deny the petition for writ of certiorari seeking review of the opinion and judgment of the Fourth District Court of Appeal of the State of Florida. The decision of said Fourth District Court of Appeal is not yet reported and is set forth beginning at page A-3 of the Appendix to the petition.

STATEMENT OF THE CASE

A. Nature of the Case

The petition is from a decision of the Fourth District Court of Appeal of the State of Florida (the "Fourth District Court") arising out of proceedings to domesticate a judgment of the Alabama Supreme Court pursuant to the Florida Enforcement of Foreign Judgments Act, Sections 35.501-55.509, Florida Statutes (1991). See A-4. The Fourth District Court held that the Alabama judgment was entitled to full faith and credit in Florida.

Petitioner argued in the Fourth District Court that the Alabama judgment was not entitled to full faith and credit because the courts of Alabama lacked personal jurisdiction over him. To the contrary, as the Fourth District Court stated:

> That Baker had full and fair opportunity to litigate the *issue* of Alabama's in personam jurisdiction over him cannot be denied - he, indeed, argued the issue extensively in both the trial and appellate courts of Alabama. . . .
>
> Whether the trial court of Alabama had personal jurisdiction over Baker was an issue squarely presented to the Alabama Supreme Court and that court has decided the issue correctly or not, adverse to Baker's contention. A foreign judgment is entitled to full faith and credit in Florida, even as to a question of the rendering court's jurisdiction, when that question has been expressly litigated and decided by the rendering court.

A-7-8.

The question of Alabama's personal jurisdiction over Baker was also previously urged upon this Court in 1992 as a reason for granting certiorari. This Court denied

Baker's petition for certiorari. *Baker v. Bennett*, ____ U.S. ____, 113 S.Ct. 1260, 122 L.Ed.2d 658 (1993).

B. Statement of the Facts[1]

The Alabama judgment which has been domesticated in Florida affirmed a judgment of the Circuit Court of Madison County, Alabama, entered pursuant to a jury verdict of fraud in favor of the respondents, J. R. and Laura Bennett (the "Bennetts"), and against petitioner Leon C. Baker ("Baker'). (C 785-786).

Baker argued at length in both the trial and appellate courts of Alabama that Alabama could not constitutionally exercise personal jurisdiction over him. The record in the underlying case in Alabama was over 3,000 pages long. From its review of this extensive record, the Alabama Supreme Court found that: (i) Baker intentionally sent documents to Alabama to be executed in Alabama by Alabama residents; (ii) Baker obtained promissory notes from Alabama residents that were payable at Alabama banks; (iii) Baker mailed numerous items related to the transaction to Alabama; and (iv) Baker accepted over $580,000 in cash payments from Alabama residents in connection with the transaction. 603 So.2d 928, at 934.

---

[1]Portions of the Florida record are reproduced in the Appendix to the petition. The record in the Alabama courts has two parts, the reporter's record, a transcript of the trial proceedings and the clerk's record, pleadings, motions, and other documents, including depositions, filed in the case. Citations to pages of the Alabama transcript are preceded by R (e.g., R32) and to the clerk's record by C (e.g., C34). Petitioner's Alabama exhibits are preceded by P (e.g., P21) and Respondents' Alabama exhibits are preceded by D (e.g., D4). There is no appendix to this brief, but citations to the appendix to the petition are preceded by A (e.g., A-21).

The Alabama Supreme Court held that these facts were sufficient to support personal jurisdiction over Baker. Baker previously sought review in this Court of this ruling on the question of personal jurisdiction. This Court denied certiorari. *Baker v. Bennett, supra.*

Baker's statement of facts in his present petition again relates primarily to the issue of personal jurisdiction. His statement that he had no contacts with Alabama other than unsolicited phone calls to him in New York is a blatant falsehood. In addition to the facts relating to jurisdiction previously noted, Baker ignores a plethora of other contacts he had with Alabama. At any rate, it is unnecessary for this Court to reexamine the record in the Alabama case. The Alabama Supreme Court found ample contacts upon which to base jurisdiction over Baker, and this Court previously declined review.

Baker also makes extensive arguments in his statement of facts that are wholly unsupported by the record. Petitioner's allegations that campaign contributions by respondents' attorneys corrupted the judicial process are based solely on (i) his hearsay affidavit, (ii) an article from *Forbes* magazine which is not in the record, and (iii) a supplement to the petition which is likewise not record evidence.

REASONS FOR DENYING THE WRIT

The petition for a writ of certiorari is frivolous and should be denied.

The reasons urged for granting the writ can primarily be boiled down to two. First, petitioner argues that the courts of Alabama did not have *in personam* jurisdiction over him and that he was not given a full and fair opportunity to contest jurisdiction. To the contrary, as the Fourth District Court found, Baker argued the issue of personal jurisdiction vigorously in both the Alabama trial

and appellate courts [see *Baker v. Bennett*, 603 So.2d 928 (Ala. 1992), *cert. denied*, ____U.S. ___, 113 S.Ct. 1260, 122 L.Ed.2d 658 (1993)]. Moreover, Baker previously presented the very same issue to this Court in 1992. In fact, Baker's present petition is almost entirely duplicative of his 1992 petition. Whole passages are lifted verbatim from the prior petition. See Baker's Petition for Writ of Certiorari to the Supreme Court of Alabama, No. 92-932, October Term 1992. This Court denied Baker's 1992 petition. The issue of personal jurisdiction should have been finally laid to rest at that time. It is a patent abuse of this Court's processes for Baker to once again raise this issue.

Notwithstanding the above, Baker again urges the absence of personal jurisdiction. Baker just couches the argument this time in the context of the Full Faith and Credit Clause rather than the Due Process Clause. But this case is simply a classic example of the enforcement of a sister state's money judgment, where the personal jurisdiction issue was raised and litigated in the first state (Alabama). It is well-established that the courts of Florida may not constitutionally permit Baker to relitigate his case through this subsequent attempt to attack the merits of the Alabama judgment collaterally. This Court should once more decline review.

Second, Baker, without any record support, argues that respondents' counsel made "very large contributions to the election campaigns of the judges who decided the case." Pretermitting the question of whether this Court should concern itself with whether states should elect judges and how those election campaigns should be financed, there is absolutely no evidence in the record to support such an inquiry. Petitioner includes in the Appendix to the petition his personal, hearsay affidavit that such contributions were made, a vague, unsupported reference in the petition to an article from *Forbes* magazine

and a supplement to the petition which is not in the record. If, after the case was decided, Baker had discovered evidence that the Justices of the Alabama Supreme Court were somehow corrupted, under the law of Alabama, he could have filed a motion for relief from the judgment in the Alabama court. He did not do so. Under these circumstances, even were the Court inclined to grant review on this essentially political question, there is not a sufficient record to warrant review in this case.

Baker's contentions regarding the jury arguments of respondents' counsel ignore both the prompt curative instructions given by the trial court and the fact that Baker has already made this argument in his prior petition for certiorari. Likewise, Baker's Commerce Clause arguments constitute nothing more than a rehash of those already presented to this Court in his 1992 petition.

Finally, Baker cites cases which hold that a full and fair hearing is necessary for issue preclusion to obtain. Respondent has no quarrel with that basic proposition. However, Baker's arguments about "issue preclusion" and a "full and fair hearing" are simply irrelevant to the question of whether Florida was required to enforce this Alabama money judgment. Baker appeared and defended on the merits in Alabama, including the issue of personal jurisdiction. The Full Faith and Credit Clause was established for precisely this purpose, i.e., to bar the relitigation of one's case in a second state. Moreover, Baker's argument that he did not have a full and fair hearing relies again on unsupported allegations regarding political contributions. In any event, Baker was permitted a full and fair hearing. As the Florida District Court determined:

> That Baker had full and fair opportunity to litigate the *issue* of Alabama's in personam juris-

> diction over him cannot be denied - he, indeed, argued the issue extensively in both the trial and appellate courts of Alabama. . . .

(A-7)

Thus, the Florida court correctly held that the Alabama judgment was entitled to full faith and credit. This Court should deny the writ.

CONCLUSION

For the reasons stated, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

JAMES L. NORTH
Counsel of Record
J. TIMOTHY FRANCIS
James L. North & Associates
700 Title Building
300 21st Street North
Birmingham, Alabama 35203
(205) 251-0252

JOHN W. HALEY
BRUCE J. MCKEE
Hare, Wynn, Newell & Newton
The Massey Building
290 21st Street North, Suite 800
Birmingham, Alabama 35203-3713
(205) 328-5330